

**EXHIBIT “A”****IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA****STATE OF OKLAHOMA, *et al.*****Plaintiffs****vs.****TYSON FOODS, INC., *et al.*****Defendants****Case No. 4:05-cv-00329-GKF-SAJ****DEFENDANT CAL-MAINE FOODS, INC. AND  
CAL-MAINE FARMS, INC.,’S COUNTERCLAIM**

Separate Defendants Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. hereby set forth their counterclaim against Plaintiffs pursuant to Fed. R. Civ. P. 13.

1. Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. incorporate as though restated herein their responses and denials to the allegations of Plaintiff’s Second Amended Complaint, and assert this counterclaim without prejudice to their defenses and positions, among others, that (1) Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. are not liable to Plaintiffs under CERCLA, 42 U.S.C § 9607(a); (2) Plaintiffs are not entitled to an injunction against Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. under RCRA, 28 U.S.C. § 6972 and (3) they are not liable to Plaintiffs in any respect.

2. Plaintiffs allege that the entire Illinois River Watershed (“IRW”), the grower buildings, structures, installations and equipment, as well as the land to which “poultry waste has been applied, constitute a “facility” as set forth in CERCLA, 42 U.S.C. § 9601(9). (Second Am. Compl. ¶¶ 21, 71, 80.)

3. Plaintiffs allege that constituents of “poultry waste,” including but not limited to phosphorus and phosphorus compounds, nitrogen and nitrogen compounds, zinc and zinc compounds, copper and copper compounds, and arsenic and arsenic compounds, constitute “hazardous substances” as set forth in CERCLA, 42 U.S.C. § 9601 (14). (Second Am. Compl. ¶¶ 57, 73, 79.)

4. Plaintiffs allege that “releases” or “threatened releases” of the substances listed above in Paragraph 3 have occurred at or from the alleged “facility.” (Second Am. Compl. ¶¶ 21, 70-71, 79-80.)

5. Plaintiffs allege that Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. are a “covered person” pursuant to 42 U.S.C. § 9607(a), by virtue of their alleged role in the land application of poultry litter in the IRW (Second Am. Compl. ¶¶ 73-74, 82-83.), and on that basis assert that Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. are jointly and severally liable for response costs and natural resource damages pursuant to 42 U.S.C. § 9607. (Second Am. Compl. ¶¶ 76, 88.)

6. Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. have denied the foregoing allegations, including (but not limited to) the allegation that Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. are jointly and severally liable for response costs and natural resource damages. Should the Court find, however, that the IRW or any portion thereof constitutes a CERCLA “facility,” that the substances listed above in Paragraph 3 are “hazardous substances” as defined in CERCLA, and that “releases” or “threatened releases” of such substances have occurred, the following additional facts establish Plaintiff’s liability to Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. pursuant to 42 U.S.C. § 9607(a) and 9613(f).

7. Plaintiffs are “persons” as defined in 42 U.S.C. § 9601(21).

8. Plaintiffs own, control and/or operate properties within the IRW, including (but not limited to) Natural Falls State Park, Adair State Park, Cherokee Landing State Park, Tenkiller State Park, Northeastern State University, picnic areas, access areas, offices, storage facilities, and recreational facilities.

9. On information and belief, Plaintiffs have released materials onto the land, soil, groundwater or surface water at one or more of their properties within the IRW that contain one or more of the substances listed in Paragraph 3 above.

10. On information and belief, Plaintiffs own, manage, operate and/or exercise control (sovereign and otherwise) over properties and equipment, including (but not limited to) septic systems and lagoons, within the IRW for the treatment and disposal of wastewater, including human waste.

11. On information and belief, one or more of the aforementioned wastewater treatment systems/facilities has released onto the land, soil, groundwater, or surface water of the IRW, one or more of the substances listed in Paragraph 3 above.

12. Further, Plaintiffs have directed, authorized, permitted and/or arranged for the release of one or more of the substances listed above in Paragraph 3 including (but not limited to) wastewater from publicly and privately owned treatment works, discharge from gravel mining, storm water, industrial waste water, and the land application of biosolids on and into the waters of the IRW.

13. Accordingly, and subject to the conditions set forth in Paragraph 6 above, Plaintiffs constitute persons who are liable under 42 U.S.C. § 9607(a), and who are therefore liable pursuant to 42 U.S.C. § 9613(f) for their equitable share of any past,

present, and future response costs and natural resource damages established in the prosecution of their claims against Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc.

14. Although other grounds also refute Plaintiffs' claims that Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. are jointly liable, including (but not limited to) the requirement of specific causation for natural resource damages, Plaintiffs' status as liable parties in particular renders Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc.'s share of any past, present or future response cost and natural resource damages, if any, several only and not joint.

15. Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. are further entitled to a declaration that Plaintiffs shall be liable for their allocable share of all future response costs and natural resource damages, if any.

WHEREFORE, Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. assert that if the Court finds that Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. are liable pursuant to 42 U.S.C. § 9607(a), then judgment should be entered against Plaintiffs granting Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. the following relief:

- a. A declaration that Plaintiffs are liable to Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. pursuant to 42 U.S.C. § 9607(a) and 9613(f), and that they shall bear their allocable share of any past, present, and future response costs and natural resource damages, including any recoverable costs incurred in complying with any injunction, should Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. be found liable for any such costs or damages or subject to any such injunction, as well as an award of such costs and damages, as appropriate;

- b. A declaration that Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc.'s share of liability for past, present, and future response costs and natural resource damages, if any, is several, and that Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. shall bear no more than their equitable share of any such liability; and
- c. An award of Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc.'s attorney's fees and costs, together with any other relief the Court deems just and appropriate.

16. Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. reallege and incorporate herein the foregoing allegations of this Counterclaim, and further allege as follows:

17. As set forth above, Plaintiffs constitute persons who are liable under 42U.S.C. § 9607(a), and who are therefore liable to Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. pursuant to 42 U.S.C. § 9613(f) for their equitable share of any past, present, and future response costs and natural resource damages established in the prosecution of their claims against Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. Plaintiffs' status as liable parties in particular renders Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc.'s share of any past, present or further response costs and natural resource damages, if any, several only and not joint.

18. Title 12 of Oklahoma Statutes § 832 provides that "[w]hen two or more persons become jointly or severally liable in tort for the same injury to person or property..., there is a right of contribution among them even though judgment has not been recovered against all or any of them..."

19. “Contribution” under 42 U.S.C. § 113(f) is defined as the common law tortfeasor’s “right to collect from others responsible for the same tort after the tortfeasor has paid more than his or her proportionate share, the shares being determined as a percentage of fault.”

20. To whatever extent Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. are unable to collect the full proportionate and equitable share of any costs or damages from Plaintiffs through 42 U.S.C. § 9613(f), Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. are entitled to invoke 12 Okla. Stat. § 832 to recover its outstanding contribution amounts, if any.

WHEREFORE, Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. assert that if the Court finds that Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. are liable pursuant to 42 U.S.C. § 9607(a), then judgment should be entered against Plaintiffs granting Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. the following relief;

- a. A declaration that Plaintiffs are liable to Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. pursuant to 12 Okla. Stat. § 832, and that they shall bear their allocable share of any past, present and future response costs and natural response costs and natural resource damages, including any recoverable costs incurred in complying with any injunction, should Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. be found liable for any such costs or damages or subject to any such injunction, as well as an award of such costs and damages, as appropriate;
- b. A declaration that Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc.’s share of liability for past, present, and future response costs and natural resource

damages, if any, is severable, and that Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc. shall bear no more than their equitable share of any such liability; and;

- c. An award of Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc.'s attorney's fees and costs, together with any other relief the Court deems just and appropriate.

Respectfully submitted,

By: /s/ Robert P. Redemann

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**CERTIFICATE OF SERVICE**

I certify that on the 15th day of January 2008, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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